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COHN FERRIS
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Angela F. Collins

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December 21, 2004

VIA MESSENGER

Marlene H. Dortch, Secretary
Federal Communications Commission
Wireline Competition Bureau - CPD 214 Appls.
c/o Mellon Bank
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: Application of Con Edison Communications, LLC and FiberNet Telecom, Inc. under Section 214 of the Communications Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission's Rules for Authorization to Transfer Control of Con Edison Communications, LLC to FiberNet Telecom, Inc.

Dear Secretary Dortch:

Enclosed on behalf of Con Edison Communications, LLC ("CEC") and FiberNet Telecom, Inc. ("FiberNet"), please find an original plus six (6) copies of an application for Commission approval to transfer control of CEC to FiberNet, pursuant to a Stock Purchase Agreement ("Agreement") between their respective corporate parents, Consolidated Edison, Inc. and FiberNet Telecom Group, Inc.

Pursuant to Section 63.04(b) of the Commission's rules, this application is submitted as a combined domestic Section 214 transfer of assets application and international Section 214 transfer of assets application ("Combined Application"). This Combined Application has been filed concurrently with the International Bureau, in accordance with the Commission's rules, via the International Bureau Filing System.

Also enclosed is a completed FCC Form 159 and a check made payable to the Commission in the amount of \$895 to cover the filing fee for the domestic transfer application.

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If you have any questions concerning this matter, please contact me or any of the contacts listed on the Combined Application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Angela Collins", with a stylized flourish at the end.

Angela F. Collins
Counsel for FiberNet Telecom, Inc.

Enclosures

cc: David Snyder, Counsel for CEC

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

(1) LOCKBOX # 358145			
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$895.00	
(4) STREET ADDRESS LINE NO. 1 701 Pennsylvania Avenue, NW			
(5) STREET ADDRESS LINE NO. 2 Suite 900			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20004
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-434-7300		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0003729084			
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME FiberNet Telecom Group, Inc.			
(14) STREET ADDRESS LINE NO. 1 570 Lexington Avenue			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY New York		(17) STATE NY	(18) ZIP CODE 10022
(19) DAYTIME TELEPHONE NUMBER (include area code) 212-405-6206		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0011872207			
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$895.00	(27A) TOTAL FEE \$895.00		
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE		
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
I, <u>Angela Collins</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>Angela Collins</u>		DATE <u>12/21/04</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003(REVISED)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Con Edison Communications, LLC)	
)	
and)	File No. ITC-T/C-2004 _____
)	
FiberNet Telecom, Inc.)	
)	WC Docket No. 04-_____
Application Under Section 214)	
of the Communications Act of 1934,)	
as Amended, and Sections 63.04 and 63.24)	
of the Commission's Rules for Authorization)	
to Transfer Control of Con Edison)	
Communications, LLC to FiberNet)	
Telecom, Inc.)	

JOINT APPLICATION

Con Edison Communications, LLC ("CEC") and FiberNet Telecom, Inc. ("FiberNet") (together "Applicants"),^{1/} pursuant to Section 214 of the Communications Act of 1934, as amended, and Sections 1.763, 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, 47 C.F.R. §§ 1.763, 63.03, 63.04, 63.18, and 63.24, hereby request approval of the transfer of stock of CEC Holding Company and the transfer of control of CEC to FiberNet, pursuant to a Stock Purchase Agreement ("Agreement") between their respective corporate parents, CEI and FTG.

^{1/} FiberNet is a wholly-owned subsidiary of FiberNet Operations, Inc., which is a wholly-owned subsidiary of FiberNet Telecom Group, Inc. ("FTG"), a publicly traded company (NASDAQ: FTGX) with its principal executive offices at 570 Lexington Avenue, New York, New York. CEC is a subsidiary of Consolidated Edison Communications Holding Company, Inc. ("CEC Holding Company"), which is a wholly-owned subsidiary of Consolidated Edison, Inc. ("CEI"). CEI, a New York corporation, is a publicly traded company (NYSE: ED) with its principal executive offices located at 4 Irving Place, New York, New York. Statements herein with respect to FiberNet, FTG, and/or any other entity currently affiliated therewith, are made by and attributable exclusively to FiberNet and its affiliates. Statements herein with respect to CEI, the current CEC, and/or the current CEC Holding Company, are made by and attributable exclusively to CEI and its affiliates.

As permitted by Section 63.04(b) of the Commission's rules, 47 C.F.R. § 63.04(b), Applicants are filing a combined domestic and international Section 214 transfer of control application. In connection with the proposed transfer of control of CEC, a Commission licensee that holds international and domestic Section 214 authority, Applicants provide below the information required by Sections 63.18 and 63.24(a) of the Commission's rules, 47 C.F.R. §§ 63.18, 63.24(a). In addition, in place of an exhibit, the information required by Section 63.04(a)(6) through (a)(12) of the Commission's rules, 47 C.F.R. § 63.04(a)(6)-(12), with respect to the transfer of control of CEC's domestic interstate operations, which are conducted by virtue of blanket domestic authority under Section 214, is provided in Section V. below.^{2/}

Applicants respectfully request streamlined, expedited treatment of this Application pursuant to Sections 63.03 and 63.12 of the Commission's rules, 47 C.F.R. §§ 63.03, 63.12. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's rules, 47 C.F.R. § 63.03(b)(2)(i), because neither CEC, FiberNet, nor their respective affiliates are dominant with respect to any telecommunications service. As a result of the transaction, FiberNet and its affiliates together will have market share in the interstate, interexchange market of substantially less than ten percent (10%), and will not be dominant with respect to any domestic telecommunications service. This Application also qualifies for streamlined treatment under Section 63.12 because: (i) neither CEC nor FiberNet are affiliated with a dominant foreign carrier; (ii) as a result of the transaction, neither FiberNet nor its affiliates will become affiliated with any foreign carrier; and, (iii) none of the other scenarios outlined in Section 63.12(c) apply.

^{2/} CEC has authorization to provide domestic interstate services on a non-dominant basis in the following states: Connecticut, Delaware, Maine, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Washington, D.C.

I. The Applicants

A. Con Edison Communications, LLC

CEC is a New York limited liability company that builds and operates fiber optic networks to provide telecommunications services. CEC is a subsidiary of CEC Holding Company.^{3/} CEC holds an international Section 214 authorization to provide global facilities-based and global resale services. *See* File Number ITC-214-20001128-00698 (issued December 21, 2000) (*pro forma* transfer from Consolidated Edison Communications, Inc. to CEC noted on January 29, 2002).

CEC offers a comprehensive range of data and voice transport products and services designed to enhance the performance of its customers' networks. CEC built and operates its own fiber optic network providing managed data transport services, custom networks, local and long distance voice services, and Internet access services. CEC serves local and long distance carriers, Fortune 1000 corporations, small and medium businesses, and Internet, cable, wireless, and video companies.

B. FiberNet Telecom, Inc.

FiberNet, a Delaware corporation, is a wholly owned subsidiary of FiberNet Operations, Inc., a Delaware corporation and an intermediate level holding company. FiberNet Operations, Inc. is a wholly owned subsidiary of FTG.^{4/} In addition, FiberNet Operations, Inc. owns 3.614 percent and FTG owns 96.386 percent of the membership interests of Devnet L.L.C. ("Devnet"), a Delaware limited liability company. FiberNet also owns all of the outstanding membership interests of Local Fiber, LLC ("Local Fiber"), a New York limited liability company, and all of

^{3/} *See supra* note 1.

^{4/} *See supra* note 1.

the outstanding membership interests of FiberNet Equal Access, LLC ("Equal Access"), also a New York limited liability company.

FiberNet is a communications service provider focused on providing wholesale broadband connectivity for data, voice, and video transmission on its fiber optic networks in major metropolitan areas. FiberNet offers an advanced high-bandwidth, fiber-optic solution to support the demand for network capacity in the intra-city market or local loop. FiberNet has established its primary operations in the New York and Los Angeles metropolitan areas. FiberNet conducts its primary business operations through its operating subsidiaries and affiliates, Devnet, Local Fiber, and Equal Access. Local Fiber is authorized to provide both domestic and international interexchange services and holds an international Section 214 authorization to provide global facilities-based and global resale services. *See* File Number ITC-97-200 (issued May 29, 1997).

II. Description of the Proposed Transaction and its Anticipated Effect

Pursuant to the Agreement, FTG will purchase for cash all of the outstanding shares of the capital stock of CEC Holding Company (indirect parent of CEC) held by CEI, the parent company of CEC Holding Company. As permitted by the Agreement, FTG plans to designate its subsidiary, FiberNet, as the entity that will receive the CEC Holding Company stock from CEI. CEC Holding Company will thereafter become a direct subsidiary of FiberNet, and CEC will become an indirect subsidiary of FTG through FiberNet.^{5/}

FiberNet submits that its significant expertise and technical competence will strengthen CEC's operations. FiberNet currently provides certified telecommunications services through its

^{5/} On or prior to closing of the transaction, the name of CEC will be changed to FiberNet Enterprise Services, LLC and the name of CEC Holding Company will be changed to FiberNet Enterprise Services Holding Company, Inc.

subsidiary, Local Fiber, and is an experienced, qualified provider of telecommunications services.^{6/} FiberNet is a well-respected operator of fiber optic networks. Approval of the proposed transaction should increase competition by strengthening the financial and competitive position of CEC and allow CEC to expand its operations, while continuing to provide high quality, innovative and competitively-priced service to its existing customers and to new subscribers.

III. The Proposed Transaction Furthers the Public Interest

The proposed transaction furthers the public interest in the following respects: (i) depth of management will be strengthened by the combination of management expertise and experience; (ii) as an affiliate of FiberNet, CEC will have access to the public capital markets which can provide support for the expansion of the services CEC offers; (iii) no service interruptions are contemplated; (iv) it will not change the existing terms or conditions of the services now being provided by CEC; and, (v) it will be transparent to the customers of CEC.

The proposed transaction is intended to enhance the financial, managerial, and technical qualifications of CEC to provide telecommunications services. Following the proposed transaction, CEC will have the financial support of FiberNet and will continue to deliver advanced telecommunications services. In addition, CEC's ability to provide telecommunications services will be further enhanced by the proposed transaction through its access to the telecommunications expertise of its new parent, FiberNet, which currently provides certified telecommunications services through its subsidiary Local Fiber. The combination of FiberNet's and CEC's existing technical experience will enhance CEC's ability to continue to efficiently provide and expand its competitive services.

^{6/} Local Fiber has authority to provide telecommunications services in the states of California, Illinois, New Jersey, and New York.

The proposed transaction will be completed at the holding company level and, therefore, is not expected to affect the day-to-day operations of CEC and will not adversely affect the services currently provided by CEC. CEC will continue to provide service to all of its existing customers without interruption, consistent with its existing tariffs and applicable law. CEC also will continue to hold authority to operate and expects to retain its customer contacts. The proposed transaction will be transparent to the customers of CEC. There will be no change in the terms, conditions, or price of service, and no detrimental change in customer service. In addition, it is anticipated that CEC's management and employees will remain primarily the same upon consummation of the proposed transaction. The proposed transaction will have no negative effects, and the stock transfer will not change the qualifications of CEC. The Applicants submit that CEC is, and will continue to be, well qualified to continue providing telecommunications services.

In sum, the proposed transaction should strengthen the ability of CEC to compete and to offer enhanced telecommunications services. The proposed transaction will place CEC in a better position to continue to provide and expand service offerings to its customers. The proposed transaction will not have a detrimental effect on, or result in a material change in, the services provided to existing customers of CEC.

IV. Information Required by Section 63.18 of the Commission's Rules

Pursuant to Section 63.18(e)(3), Applicants submit the following information in support of this Application:

(a) Name, address and telephone number of each Applicant:

Transferor

Con Edison Communications, LLC
55 Broad Street, 22nd Floor
New York, New York 10004
Tel: (212) 324-5010
Fax: (212) 631-8990
FRN: 0006-2544-03

Transferee

FiberNet Telecom, Inc.
570 Lexington Avenue
New York, NY 10022
(212) 405-6206
(212) 421-8860 – Fax
FRN: 0011-8722-07

(b) Jurisdiction of Organizations:

CEC is a limited liability company organized under the laws of the State of New York.

FiberNet is a corporation organized under the laws of the State of Delaware.

(c) Correspondence concerning this Application should be sent to:

For CEC:

David L. Snyder, Esq.
Snyder & Snyder, LLP
94 White Plains Road
Tarrytown, New York 10591
(914) 333-0700
(914) 333-0743 – Fax
DSnyder@snyderlaw.net

David Robinson, Esq.
Vice President and General Counsel
Con Edison Communications, LLC
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New York, NY 10004
(212) 324-5010
(212) 631-8990 - Fax

For FiberNet:

Chérie R. Kiser, Esq.
Angela F. Collins, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
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Michael Hubner, Esq.
Vice President and General Counsel
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570 Lexington Avenue
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(212) 421-8860 – Fax

(d) Existing Section 214 Authority:

CEC holds an international Section 214 authorization to provide global facilities-based and global resale services. *See* File Number ITC-214-20001128-00698 (issued Dec. 21, 2000) (*pro forma* transfer from Consolidated Edison Communications, Inc. to CEC noted on January 29, 2002). FiberNet's operating subsidiary, Local Fiber, holds global resale and facilities-based international Section 214 authorization. *See* File Number ITC-97-200 (issued on May 29, 1997). Local Fiber's existing 214 authority will remain unchanged as a result of this transaction.

(e) Statement of Intention:

By this Application, Applicants seek authority for a transaction that will result in the transfer of control of CEC to FiberNet.

(h) Name, Address, Citizenship and Principal Business of Owners with 10% or Greater Direct or Indirect Ownership Interest:

Following the close of the transaction, the following will hold a 10% or greater interest in CEC (to be renamed FiberNet Enterprise Services, LLC):

Name/Address/Citizenship	Principal Business	Percent of Interest Held
FiberNet Enterprise Services Holding Company, Inc. (former CEC Holding Company) (New York Corporation)	Holding Co.	100%

Following the close of the transaction, the following will hold a 10% or greater interest in CEC Holding Company (to be renamed FiberNet Enterprise Services Holding Company, Inc.):

Name/Address/Citizenship	Principal Business	Percent of Interest Held
FiberNet Telecom, Inc. (Delaware Corporation)	Holding Co.	100%

Following the close of the transaction, the following will hold a 10% or greater interest in FiberNet Telecom, Inc.:

Name/Address/Citizenship	Principal Business	Percent of Interest Held
FiberNet Operations, Inc. (New York Corporation)	Holding Co.	100%

Following the close of the transaction, the following will hold a 10% or greater interest in FiberNet Operations, Inc.:

Name/Address/Citizenship	Principal Business	Percent of Interest Held
FiberNet Telecom Group, Inc. (New York Corporation)	Telecomm.	100%

Following the close of the transaction, no entity will hold a 10% or greater interest in **FiberNet Telecom Group, Inc.**

Other than the foregoing, following the transaction, no other person or entities will directly or indirectly own ten percent (10%) or more of the equity of Applicants. Applicants have no interlocking directors with foreign carriers.

(i) Foreign Carrier Certification:

Applicants certify that they are not, and subsequent to the transaction will not be, affiliated with any foreign carrier within the meaning of Section 63.09(d) and (e).

(j) Destination Country Certification:

Applicants certify that they do not seek authority to provide service to any country described in paragraphs (1) through (4) of Section 63.18(j).

(k) Destination Country:

Not applicable.

(l) Resale of Unaffiliated U.S. Carrier:

Not applicable.

(m) Foreign Carriers or Affiliation with Certain Foreign Carriers:

Not applicable.

(n) Special Concessions from Foreign Carriers:

Applicants certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any United States international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) Certification Regarding Section 5301 of Anti-Drug Abuse Act of 1988:

Applicants certify pursuant to Sections 1.2001 through 1.2003 of the Commission's rules, 47 C.F.R. §§ 1.2001-1.2003, that no party to the Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(p) Streamlined Processing:

This international Section 214 Application qualifies for streamlined processing pursuant to Section 63.12(a) of the Commission's rules.

V. Additional Information Required by Section 63.04 of the Commission's Rules

Pursuant to Section 63.04 of the Commission's rules, 47 C.F.R. § 63.04, Applicants further request authority to transfer control of CEC's blanket domestic Section 214 authority to FiberNet. Applicants are filing a combined application to assign the authorizations pursuant to Section 63.04(b) of the Commission's rules. 47 C.F.R. § 63.04(b). Applicants provide the following information in support of their request:

63.04(a)(6): Description of the Transaction

The proposed transaction is described above in Section II.

63.04(a)(7): Description of Geographic Service Area and Services in Each Area

CEC offers a comprehensive range of data and voice transport products and services designed to enhance the performance of its customers' networks. CEC built and operates its own fiber optic network providing managed data transport services, custom networks, local and long distance voice services, and Internet access services. CEC serves local and long-distance carriers, Fortune 1000 corporations, small and medium businesses, and Internet, cable, wireless, and video companies. CEC is certificated to offer regulated services in the states of Connecticut,

Delaware, District of Columbia, Maine, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

63.04(a)(8): Presumption of Non-Dominance and Qualification for Streamlining

This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's rules because: (a) upon completion of the transaction, FiberNet will continue to have less than ten percent (10%) market share in the interstate, interexchange market; (b) neither FiberNet, CEC, nor any of their affiliates are dominant with respect to any service; and (c) Applicants and their affiliates will provide local exchange service only in areas served by dominant local exchange carriers.

63.04(a)(9): Other Pending Commission Applications Concerning the Proposed Transaction

There are no other applications pending before the Commission concerning this proposed transaction.

63.04(a)(10): Special Consideration

None.

63.04(a)(11): Waiver Requests (If Any)

None.

63.04(a)(12): Public Interest Statement

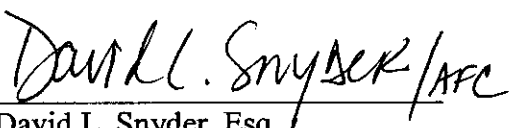
The proposed transaction is in the public interest for the reasons detailed in Section III above.

VI. Conclusion

Based on the foregoing, Commission approval of the transfers set forth in this Application will serve the public interest, convenience, and necessity. Accordingly, Applicants respectfully request that the Commission grant this Application as expeditiously as possible through its streamlined processing procedures.

Respectfully submitted,

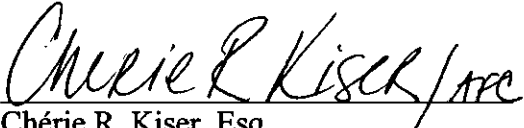
Con Edison Communications, LLC


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Its Attorneys

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Its Attorneys

Dated: December 21, 2004